

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation adopts an amendment to Chapter 620, “OWI and Implied Consent,” Iowa Administrative Code.

Iowa Code section 321J.4(2) was amended by 2009 Iowa Acts, Senate File 419, section 13, to reduce the minimum period of ineligibility from one year to 45 days for a temporary restricted license (TRL) for a person convicted of operating while intoxicated (OWI) who has had a previous conviction or revocation under Iowa Code chapter 321J. The legislation became effective July 1, 2009.

This amendment was undertaken in response to an amendment to 23 U.S.C. § 164, “Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence,” effected by the SAFETEA-LU Technical Corrections Act of 2008, Public Law No. 110-244, § 115, 122 Stat. 1572 (June 6, 2008), which previously required states to impose a one-year hard revocation of driving privileges on a repeat offender but which now allows states to impose either a one-year hard revocation or a 45-day hard revocation followed by a period of restricted driving to and from work, school, or an alcohol treatment program. (A “hard” revocation means no restricted driving is allowed during the period of revocation.) Because the amendment to Iowa Code section 321J.4(2) appears clearly calculated to remain within the requirements of 23 U.S.C. § 164, and because said intent demands an interpretation of the proper scope during the first year of revocation of a TRL issued to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) that is not addressed in current rule, a new subrule is needed to address the proper scope of such a TRL. Further, the National Highway Traffic Safety Administration (NHTSA), which enforces compliance with the requirements of 23 U.S.C. § 164, has reviewed the amendment to Iowa Code section 321J.4(2) and communicated to the Department that it renders Iowa out of compliance with the requirements of 23 U.S.C. § 164, absent a corresponding administrative rule that makes clear that the Department is interpreting and enforcing Iowa Code section 321J.4(2) in compliance with the requirements of 23 U.S.C. § 164. The new subrule will clarify Iowa’s compliance with these federal requirements and prevent reallocation of necessary federal highway funds.

A new subrule is added to rule 761—620.3(321J) to provide that, any other provision of 761—Chapter 620 of the Department’s rules notwithstanding, any TRL issued to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) shall be limited during the first year of the two-year revocation period to driving to and from work when necessary to maintain the person’s present employment and shall not be allowed for any other purpose, including but not limited to transporting dependent children to and from a location for child care. After the first year of the two-year revocation period, a TRL issued to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) may permit the person to drive to and from work as well as for any other work purpose when necessary to maintain the person’s present employment, and may include permission for the person to transport dependent children to and from a location for child care when that activity is essential to continuation of the person’s employment. The new subrule also provides that all pleadings and orders submitted by the Department under Iowa Code section 321J.4(9) in regard to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) will be in accord with the requirements of the new subrule, and the Department shall enforce any order authorizing the Department to issue a TRL to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) according to the requirements of the new subrule. The new subrule will apply to revocations arising from convictions entered on or after July 1, 2009.

For good cause and pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation prior to adoption of these rules pursuant to Iowa Code section 17A.4(1) are impracticable and contrary to the public interest. The amendment to Iowa Code section 321J.4(2) was effective on July 1, 2009, and therefore demands implementation of a statute regarding its proper enforcement on or as soon as is reasonably practical after that date. Additionally, under NHTSA

standard procedure, NHTSA will issue a statement of noncompliance with 23 U.S.C. § 164 on or around July 1, 2009, and will then allow Iowa 30 days in which to challenge that determination. NHTSA will make a final determination of compliance or noncompliance after that challenge is submitted, and if a final determination of noncompliance is entered, NHTSA will, on October 1, 2009, reallocate federal highway construction funds in an amount estimated to be just under \$9 million. Following the standard procedure for notice and public participation set forth in Iowa Code section 17A.4 will place proper enforcement of the amendment to Iowa Code section 321J.4(2) well beyond July 1, 2009, and October 1, 2009. Such delay would prevent Iowa from meeting NHTSA's compliance requirements and deadlines and would result in the diversion of substantial and necessary highway construction funds.

Pursuant to Iowa Code section 17A.5(2)“b”(2), the Department finds the normal effective date of this amendment, 35 days after publication, should be waived and the amendment be made effective July 14, 2009. As explained above, the new subrule must become effective on or as soon after July 1, 2009, as is reasonably practicable to provide for proper enforcement of the amendment to Iowa Code section 321J.4(2) and to allow Iowa to confirm compliance with NHTSA's requirements within the time frame for challenge and before the October 1, 2009, reallocation date.

The Department shall not grant any waivers under the provisions of this new subrule because any waiver would nullify the purpose of this rule making and result in a diversion of highway construction funds.

This amendment is also published herein under Notice of Intended Action as **ARC 8025B** to allow for public comment.

This amendment became effective on July 14, 2009.

This amendment is intended to implement Iowa Code section 321J.4(2) as amended by 2009 Iowa Acts, Senate File 419, section 13.

The following amendment is adopted.

Adopt the following new subrule 620.3(6):

620.3(6) *Issuance of temporary restricted license to repeat offender whose driving privilege is revoked under Iowa Code section 321J.4(2).*

a. It is the opinion of the department that the amendment to Iowa Code section 321J.4(2) by 2009 Iowa Acts, Senate File 419, section 13, was undertaken in response to changes to 23 U.S.C. § 164, “Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence,” effected by the SAFETEA-LU Technical Corrections Act of 2008, Public Law No. 110-244, § 115, 122 Stat. 1572 (June 6, 2008), and that Iowa Code section 321J.4(2) as amended by 2009 Iowa Acts, Senate File 419, section 13, is intended to remain and be interpreted in conformance with the requirements of 23 U.S.C. § 164, including the requirements for restricted driving privileges after 45 days.

b. Accordingly, any provision in subrules 620.3(1) to 620.3(5) notwithstanding, any temporary restricted license issued to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) shall be limited during the first year of the two-year revocation period to driving to and from work when necessary to maintain the person's present employment, and shall not be allowed for any other purpose, including but not limited to transporting dependent children to and from a location for child care. After the first year of the two-year revocation period, a temporary restricted license issued to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) may permit the person to drive to and from work as well as for any other work purpose when necessary to maintain the person's present employment and may permit the person to transport dependent children to and from a location for child care when that activity is essential to continuation of the person's employment.

c. All pleadings and orders submitted by the department under Iowa Code section 321J.4(9) in regard to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) will be in accord with the requirements of this subrule, and the department shall enforce any order authorizing the department to issue a temporary restricted license to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) according to the requirements of this subrule.

d. The department interprets 2009 Iowa Acts, Senate File 419, section 13, as applying to convictions entered on or after July 1, 2009, and accordingly this subrule shall apply to revocations arising from convictions entered on or after July 1, 2009.

[Filed Emergency 7/14/09, effective 7/14/09]

[Published 8/12/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/12/09.